

## Memorandum 90-141

Subject: Study L-3025 - TOD Registration of Vehicles and Vessels  
(Comments on Tentative Recommendation)

Attached is the *Tentative Recommendation relating to Transfer-on-Death Designation for Vehicles and Certain Other State-Registered Property*. We received 19 letters commenting on the TR. These are attached as Exhibits 1 through 19:

Exhibit 1: Ruth E. Ratzlaff  
Exhibit 2: Alvin G. Buchignani  
Exhibit 3: Jerome Sapiro  
Exhibit 4: Mary C. Randolph, Nolo Press  
Exhibit 5: David W. Knapp, Sr.  
Exhibit 6: Gregory Wilcox  
Exhibit 7: Jeffrey A. Dennis-Strathmeyer  
Exhibit 8: Demetrios Dimitriou  
Exhibit 9: Wilbur L. Coats  
Exhibit 10: Douglas Butler  
Exhibit 11: Frank M. Swirles  
Exhibit 12: Toby F. Montgomery  
Exhibit 13: Henry Angerbauer  
Exhibit 14: Paul Gordon Hoffman  
Exhibit 15: Stuart D. Zimring  
Exhibit 16: Michael J. Anderson  
Exhibit 17: Ruth A. Phelps  
Exhibit 18: Roger V. Marshall  
Exhibit 19: Valerie Merritt for ExComm of Estate Planning,  
Trust & Probate Law Section of State Bar

Eight letters support the TR without qualification (Exhibits 1, 2, 4, 9, 10, 12, 13, and 15). Four support it with suggested revisions (Exhibits 6, 14, 16, and 18). Two support it with a question (Exhibits 7 and 17). One is equivocal with a suggested revision (Exhibit 8). One has "no objections" to it (Exhibit 11). Three oppose it (Exhibits 3, 5, and 19), including the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar.

Basis of Opposition

The State Bar Estate Planning, Trust and Probate Law Section opposes the proposal because they say it is unnecessary in view of the simplicity of the existing affidavit procedure. But the TOD proposal has two important advantages over the affidavit procedure:

(1) Unlike the affidavit procedure, the TOD proposal permits the

owner to choose the person who will get the property on the owner's death without having to make a will solely for that purpose.

(2) The TOD proposal passes the property to the TOD beneficiary at the owner's death without regard to what other property may be in the owner's estate. The affidavit procedure may be used only if the owner has no other property necessitating probate. Health & Safety Code § 18102; Veh. Code §§ 5910, 9916.

The State Bar Section also cites the significant implementation costs estimated by the Department of Motor Vehicles and the Department of Housing and Community Development. The Section discounts Missouri's experience, where no significant implementation costs were incurred, because this information came from a member of the Missouri Bar, rather than a Missouri state agency. We have since received a letter from the Administrator of the Missouri Motor Vehicle Bureau, reporting that Missouri experienced "minimal" implementation costs of their new TOD law. A copy of this letter is attached as Exhibit 20.

The State Bar Section points to problems caused by possible designation of multiple beneficiaries. The staff suggests eliminating this problem by the redraft in Exhibit 21 to permit designation of only a single TOD beneficiary. See discussion on page 3, *infra*.

David Knapp (Exhibit 5) opposes the TR as trivial and unnecessary: "None of the items listed cause any difficulty in transferring to the heirs, whether in probate or by affidavit." But the TOD proposal permits the owner to select his or her beneficiary while keeping control over the property during lifetime. This is a principal benefit of the proposal which is not afforded either by the affidavit procedure or by jointly-held title.

Jerome Sapiro (Exhibit 3) is concerned about forcing ownership on a TOD beneficiary without his or her consent. Although a beneficiary may disclaim the interest after the owner's death (Prob. Code §§ 267, 275), Mr. Sapiro thinks it is burdensome to put the beneficiary to this trouble. He acknowledges the provision in proposed Section 5910.5 of the Vehicle Code protecting the TOD beneficiary against vicarious owner's liability before title is transferred. But he is "wary and fearful about possible litigations and problems that may result, -- even without transfer of record title." The staff does not view these

fears and concerns as realistic. Disclaimer is easy, and the nonliability provision seems satisfactory.

#### REVISIONS WHOLLY OR PARTLY RECOMMENDED BY STAFF

##### Limiting TOD Designation to One Beneficiary

At the September 1990 meeting, the Commission considered a letter from the California Department of Housing and Community Development saying that "[l]imiting the TOD beneficiary to one person would avoid the substantial cost to the department to expand the owner name section" of the title document. When Missouri enacted its TOD legislation in 1987, it limited the TOD designation to a single beneficiary to reduce implementation costs. The staff recommends that we limit our recommendation in the same manner by revising the draft sections as set out in Exhibit 21.

The draft in Exhibit 21 also includes other revisions suggested by the Department -- (1) permitting a beneficiary to transfer his or her interest after death of the original owner without first securing transfer of title into the beneficiary's name, and (2) shifting the emphasis in the Health and Safety Code sections away from the title document and to the registration as the basis for ownership status. The staff has asked the Department to review these additions, and to let the staff know whether they are satisfactory.

##### Rights of Creditors

Three commentators were concerned that a TOD transfer at death would put the property out of reach of the decedent's unsecured creditors (Exhibits 7, 8, and 14). This is an important issue. The staff did not include a provision protecting creditors in the Tentative Recommendation to minimize controversy. The staff is now inclined to think that such a provision should be included.

Existing California law gives different treatment to assets passing at death, depending on the type of asset and how title is held. The following provisions protect decedent's creditors:

Affidavit procedure for collection of personal property: A person who collects decedent's personal property using the general affidavit procedure is liable for unsecured debts of the decedent, not to exceed the value of the property collected. Prob. Code § 13109.

Affidavit procedure to get title to vehicles and other state-registered property: A person who gets title to a vehicle or other state-registered property by affidavit must state that there are no unpaid creditors of the decedent, and is subject to the provisions of the general affidavit procedure for liability of a person collecting personal property. Health & Safety Code § 18102; Veh. Code §§ 5910, 9916.

Revocable trusts: After the settlor's death, property in a revocable trust is subject to claims of creditors of the settlor's estate to the extent the estate is insufficient. Prob. Code § 18201.

Property subject to power of appointment. Property subject to a general testamentary power of appointment or to a general power of appointment that was presently exercisable at the donee's death is subject to claims of the donee's creditors to the extent the estate is insufficient. Civil Code § 1390.3.

Gift in view of death. A gift in view of death is subject to claims of decedent's creditors if the estate is insufficient. Civil Code § 1153.

In other areas, decedent's creditors are not protected:

Joint tenancy: On death of one joint tenant, the surviving joint tenant takes free of claims of the decedent's creditors. Zeigler v. Bonnell, 52 Cal. App. 2d 217, 126 P.2d 118 (1942).

Multiple-Party Accounts: The California Multiple-Party Accounts Law is silent on the rights of decedent's creditors against a beneficiary who receives account funds on death of the depositor. The Commission's 1980 recommendation had the Uniform Probate Code provision making multiple-party account funds subject to claims of decedent's creditors if other estate assets are insufficient. 15 Cal. L. Revision Comm'n Reports 1605, 1653 (1980). This provision was removed from the bill because of objections from the Estate Planning, Trust and Probate Law Section of the State Bar.

We could include the following provision, drawn from the Tentative Recommendation on Gifts in View of Death, to make the property in the hands of the TOD beneficiary subject to recovery by the deceased owner's estate if the estate is insufficient to pay creditors: "A transfer at death pursuant to this section is subject to Section 9653

of the Probate Code." The staff has added this provision to Health and Safety Code Section 18102.2 and Vehicle Code Sections 5910.5 and 9916.5 in Exhibit 21. A conforming revision to Section 9653 is also included in Exhibit 21.

This raises again the question of whether we need comprehensive legislation on rights of creditors against nonprobate assets, with enforcement procedures. The Commission considered this at the April 1990 meeting. The State Bar Estate Planning, Trust and Probate Law Section reported that the Section was working on a draft statute of creditor claims procedures for trusts. The Section thought that 99 percent of the problems concerning creditors' rights against nonprobate assets arise in the trust context. (Revocable trusts are now subject to claims of decedent's creditors if other estate assets are insufficient, but no procedures are specified. See Prob. Code § 18201.) The Commission deferred further consideration of the question until the State Bar Section provides the Commission with its draft.

Since the State Bar proposal will only apply to trust assets, we could go ahead with a recommendation to permit creditor access to multiple-party account funds (consistent with the Uniform Probate Code), and other nonprobate assets such as property subject to a power of attorney. Does the Commission want the staff to prepare a memorandum and staff draft on this subject for Commission consideration?

#### Protection of Department From Liability

Michael Anderson (Exhibit 16) suggests a provision protecting the state agency against liability for making a transfer at death pursuant to a TOD designation. The staff agrees. The staff has added three new sections in the draft in Exhibit 1, drawn from the California Multiple-Party Accounts Law (Prob. Code § 5405). One section applies to motor vehicles (Veh. Code § 5910.7), one applies to undocumented vessels (Veh. Code § 9916.7), and one applies to manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes (Health & Safety Code § 18102.3).

#### Protection of TOD Beneficiary from Owner's Liability Before Title Transferred

Subdivision (b) of proposed Section 5910.5 of the Vehicle Code insulates a TOD beneficiary from owner's liability arising from

operation of a motor vehicle by someone else before record ownership is transferred to the TOD beneficiary. The State Bar Section is concerned that there may be owner's liability applicable to other types of state-registered property -- undocumented vessels, manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes. (Exhibit 19.) The State Bar Section wants a provision similar to the motor vehicle provision in each of the new sections.

The State Bar is right. There is, for example, owner's liability for an undocumented vessel. Harb. & Nav. Code § 661. Accordingly, the staff has included an exculpatory provision in Health and Safety Code Section 18102.2 (manufactured home, mobilehome, commercial coach, truck camper, floating home) and Vehicle Code Section 9916.5 (undocumented vessel) in the redraft in Exhibit 21.

#### Cross-reference to TOD Provisions in Probate Code

Paul Hoffman (Exhibit 14) suggests that there be codified cross-references in the Probate Code to these new TOD provisions and "to all the other Codes governing transfer of property at death." Some of the existing Probate Code Comments now contain references to the affidavit procedure for transfer of title to vehicles and other state-registered property. See, e.g., Comments to Prob. Code §§ 13100, 13102, 13116. If we make a conforming revision to Probate Code Section 9653 as suggested in Exhibit 21, that would provide a cross-reference in the Probate Code to the new TOD provisions. Whether or not other nonprobate transfer provisions should be referred to in Section 9653 will depend on the staff recommendation and Commission action on the general question of creditors rights against nonprobate assets discussed on page 5 *supra*.

#### Addition to Narrative in Preliminary Part

The staff proposes to add the following to a footnote in the narrative portion of the Recommendation:

Missouri has processed about 39,000 applications for TOD designations in motor vehicle registrations in the three years since Missouri enacted legislation to authorize it. Letter from James B. Callis, Administrator, Missouri Motor Vehicle Bureau, to California Law Revision Commission (Oct. 27, 1990) (on file in office of California Law Revision Commission). According to the U. S. Census Bureau, as of July 1, 1989, California had a population of 29,063,000, and Missouri had a population of 5,159,000, a ratio of 5.65

Californians for every Missourian. Based on this ratio, we may estimate that there will be about 220,000 TOD registrations in California in the first three years after enactment of authorizing legislation.

REVISIONS NOT RECOMMENDED BY STAFF

Death Certificate "If Required by the Department"?

The State Bar Section "can see no rational explanation" why the TR requires the TOD beneficiary to furnish a certificate of the death of the decedent "[i]f required by the department," when the affidavit procedure for collection of personal property requires a death certificate in all cases. Prob. Code § 13101(d). The State Bar Section "strongly" recommends that a certified copy of the death certificate be required in all cases.

The TR provides a for a death certificate "[i]f required by the department" because that is the language in the existing affidavit procedure for transfer of title to motor vehicles and other state-registered property. Health & Safety Code § 18102(b)(3); Veh. Code §§ 5910(b)(3), 9916(b)(3). Neither the Department of Motor Vehicles nor the Department of Housing and Community Development require a death certificate when the affidavit procedure is used. Both rely instead on the affidavit, made under penalty of perjury, with a statement of the date and place of decedent's death and that the claimant is entitled to the property. Cathy Mendenhall of the Department of Housing and Community Development told the staff that her Department has experienced no abuses of that system. The staff has asked the same question of the Department of Motor Vehicles, and is waiting for a response.

The staff thinks a death certificate is less necessary where the claimant is a TOD beneficiary named in the title document than under the present affidavit procedure. Fraud by a named TOD beneficiary seems far less likely than under the affidavit procedure, where anyone can claim to be an heir or devisee of the decedent.

Community Property Rights of Surviving Spouse

Gregory Wilcox (Exhibit 6) refers to his letter of May 31, 1990, regarding the right of one spouse to dispose of community property at death without consent of the other. The staff thinks it is clear that one spouse can dispose of his or her half of the community property by

will or nonprobate transfer without consent of the other spouse. We sent Mr. Wilcox' May 31 letter to our consultant, Professor Kasner, for consideration in his community property study.

Elimination of Joint Tenancy Form of Title

Roger Marshall (Exhibit 18) wants to have the term "joint tenancy" eliminated or revised for motor vehicles, accounts in financial institutions, stocks, and real property. This suggestion is beyond the scope of this recommendation, is inconsistent with common law, with previous Commission recommendations, and with the Uniform Probate Code and other uniform laws, and would be vigorously resisted by the State Bar.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

RUTH E. RATZLAFF  
Attorney at Law  
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P.O. Box 411  
Fresno, California 93708  
(209) 442-8018

LAW REV. COMM'N

OCT 27 1990

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October 25, 1990

California Law Revision Commission  
4000 Middlefield Rd. Suite D-2  
Palo Alto, California 94303-4739

Dear Commissioners:

I have reviewed your tentative recommendation relating to transfer-on-death designation for vehicles and certain other state-registered property.

I agree that the proposed legislation is a good idea. It is consistent with other changes in the law that have streamlined the transferring of properties on the death of the owner.

Sincerely,

  
Ruth E. Ratzlaff

RER:pp

**ALVIN G. BUCHIGNANI**

ATTORNEY AT LAW

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(415) 421-5650

October 26, 1990

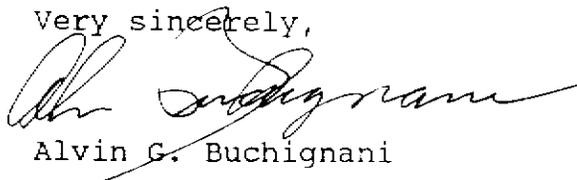
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Transfer-On-Death Designation for Vehicles

Dear Ladies & Gentlemen

I agree with the above tentative recommendation. My only suggestion is to consider further types of property that would be appropriate for such form of registration.

Very sincerely,



Alvin G. Buchignani

AGB/pzg

**JEROME SAPIRO**  
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 SUTTER PLAZA, SUITE 805  
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CA LAW REV. COMM'N

OCT 27 1990

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Oct. 26, 1990

California Law Revision Commission  
 4000 Middlefield Road, Suite D-2  
 Palo Alto, CA, 94303-4739

Re: Tentative Recommendation  
 L 3025 re Transfer-on-Death  
Designation for Vehicles, etc.

Honorable Commission:

I oppose the above-mentioned tentative recommendation in its present form for the following reasons:

1. I do not believe that one should be able to put a TOD beneficiary on a registration of vehicles, etc., without the written consent of such beneficiary or beneficiaries.

2. The effect would be to impose on the beneficiary who has not so consented to disclaim and have his, her or its rights to the subject vehicle, etc., removed, if he did not want same and did not want the transfer costs, registration fees and insurance obligations connected therewith (after death of the last owner or owners).

3. Your recommendations are too verbose.

4. There is a definite conflict in both the language proposed and the reasoning of the Commission. In certain parts of the recommendation you state that "ownership passes automatically to the TOD beneficiary upon the transferor's death". Other parts of the recommendation require proof of death and other things to change record ownership. An owner should not be able to automatically force title on one who may not know about it or want it. Hence, the automatic transfer of title language seems inappropriate.

5. Despite proposed V.C. 5910.5 (b) about non-liability of beneficiary who becomes owner not being liable under section 17150 until record ownership of the vehicle is transferred to the beneficiary, I am wary and fearful about possible litigations and problems that may result, - even without transfer of record title.

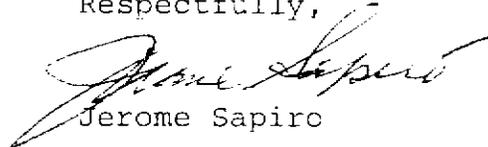
a. After death of owner, without transfer of record title a beneficiary could allow or by inaction not know of misuse of the vehicle by a third party resulting in potential liabilities. If the beneficiary automatically becomes the owner, estoppel to deny liability may be invoked under certain circumstances. This is particularly so, because V.C. §17150 allows permission to be express or "implied".

Ltr. Oct. 26, 1990, contd.  
to California Law Revision Commission

b. There is also potential for liability concerning undocumented vessel, manufactured home, mobilehome, floating home, etc., depending on knowledge, use or misuse, and failure to take care of same, - if there is an automatic transfer of title.

The present system of transfers in California does appear adequate, whether or not probate may be required. We should not expose unknowing and non-consenting beneficiaries to possible liability or the time, effort and cost of affecting transfer or disclaiming interest. Your recommendation, in present form, would so expose them.

Respectfully,



Jerome Sapiro

JS:mes

# Access to law

**N O L O P R E S S**

CA LAW REV. COMM'N

OCT 27 1990

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October 26, 1990

John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly:

On behalf of Nolo Press, I am writing to heartily endorse the Law Revision Commission's tentative recommendation relating to a transfer-on-death designation for vehicles.

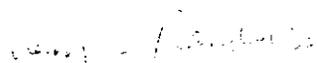
As publisher of *How to Probate an Estate in California*, Nolo Press has first-hand experience with people who are baffled and angered by the interminable paperwork and red tape of probate.

The simple reform of allowing transfer-on-death designations would eliminate the needless, costly and time-consuming step of putting the transfer of a vehicle through probate court. It would save both citizens and the courts time and money.

Allowing a transfer-on-death designation is also, as your report points out, preferable to the current probate-avoidance technique of putting title to vehicles in joint tenancy. For a variety of reasons, the joint tenancy option is not suitable for many people. And in any case, requiring this kind of planning to avoid probate unfairly penalizes less well-informed people who aren't aware of the need to engage in estate planning.

Nolo Press strongly urges the Commission to recommend approval of the transfer-on-death provision.

Sincerely,

  
Mary C. Randolph  
Legal Editor

DAVID W. KNAPP, SR.  
DAVID W. KNAPP, JR.

LAW OFFICES  
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October 29, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: TENTATIVE RECOMMENDATION RELATING TO TRANSFER ON DEATH  
DESIGNATION FOR VEHICLES (ETC).

I oppose the recommendation as being "much to do about  
nothing!"

Your statement that "The primary advantage of registering  
property in TOD form is the avoidance of the time and expense of  
probate" and that a "typical probate proceeding may last a year or  
so", and then goes on setting forth the cost of probate etc.

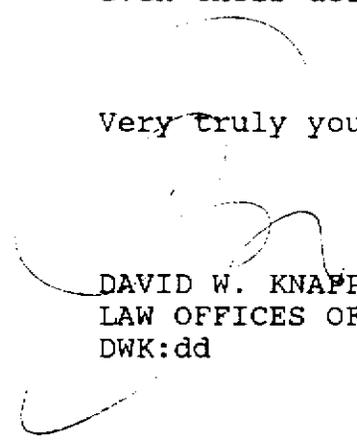
Your argument sounds like what we have read lately in the  
newspapers about the "evils of probate" etc.

None of the items listed cause any difficulty in transferring  
to the heirs, whether in probate or by affidavit.

Why don't you go all the way and include stock, bonds and  
deeds?

It would be too easy for a person to inadvertently place the  
items in the TOD name without legal counsel as it is today with  
the Department of Motor Vehicles various symbols of "and", "or" and  
even their definition of "/".

Very truly yours,

  
DAVID W. KNAPP, SR.  
LAW OFFICES OF KNAPP & KNAPP  
DWK:dd

GREGORY WILCOX  
ATTORNEY AT LAW

CA LAW REV. COMM'N

OCT 01 1990

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506 FIFTEENTH STREET, SUITE 700  
OAKLAND, CALIFORNIA 94612-1486  
(415) 451-2600

October 30, 1990

Nathaniel Sterling  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739

Re: Transfer-on-death Designation for Vehicles/#L-3025

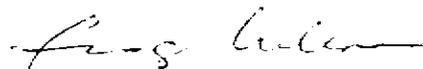
Dear Mr. Sterling:

Thank you for sending me the Tentative Recommendation with regard to Transfer-on-Death Designation for Vehicles and Certain Other State-Registered Property.

I agree that the recommended changes would be an improvement on current titling opportunities. I would only suggest that none of the suggested language deals with the issues raised in my letter to you dated May 31, 1990. These issues became the subject of your Study No. L-3048. In other words, there is nothing to indicate the authority of either spouse to use such transfer-on-death designations for the purpose of disposing of community property. This gap becomes an problem if, for example, one spouse has only his name on a community property vehicle and holds it in a transfer-on-death title to some third party. Does he have the right to transfer at least his community half of the vehicle, or is he forced to do this only by will (which defeats the purpose of your proposed amendment)?

I appreciate this opportunity to comment on the tentative recommendation.

Very truly yours,



GREGORY WILCOX

pc: James V. Quillinan  
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444 Castro Street, Suite 900  
Mountain View, CA 94041

OCT 31 1990

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JEFFREY A. DENNIS-STRATHMEYER  
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October 30, 1990

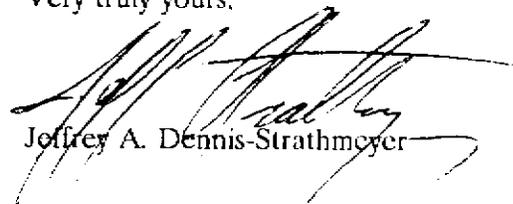
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: #L-3025: Tentative Recommendation relating to  
TRANSFER-ON-DEATH DESIGNATION FOR VEHICLES AND CERTAIN OTHER  
STATE-REGISTERED PROPERTY

Sirs:

I support the recommendation in principal. I am concerned, however, that my brief reading does not reveal any attempt to come to grips with the question of whether or not the decedent's unsecured creditors would have the right to reach the property. When motor vehicles, etc. are transferred under small estate procedures, the transferee is liable to creditors to the extent of the net value of the property. What is the rule going to be in this case?

Very truly yours,



Jeffrey A. Dennis-Strathmeyer

**DEMETRIOS DIMITRIOU**

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October 30, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Transfer-On-Death Designation for Vehicles  
and Certain Other State-Registered Property

Dear Commissioners:

The continued focus in creating ways to limit the need for probate overlooks one of the principal purposes of probate proceedings, namely the location, identification and determination of the amount of legitimate creditors' claims and their payment. Your proposed recommendation continues this trend without recognition of and at the expense of creditors. There should be a change in the existing law which would permit creditors to follow assets which pass outside of probate, such as jointly owned assets before your proposal goes forward. Why should creditors suffer just to facilitate transfer of assets? A debtor should not be able to avoid any legitimate indebtedness simply by avoiding probate, affirmative public policy considerations aside, e.g., small estates.

Yours very truly,



Demetrios Dimitriou

DD/

**WILBUR L. COATS**  
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

October 29, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Tentative Recommendation--Transfer-On-Death Designation ....

Dear Commissioners:

I agree with the tentative recommendation cited above.

The TOD procedure if approved by the legislature should be given as wide publicity as possible in order to be truly effective. Perhaps the DMV and the offices that register mobile homes could be required by a provision in the legislation to notify registrants of the opportunity to register property in TOD form.

Very truly yours,



Wilbur L. Coats

HITCHCOCK, BOWMAN, SCHACHTER & BEVERLY

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

SUITE 1030 DEL AMO FINANCIAL CENTER  
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October 31, 1990

CLRC10.31

NOV 02 1990

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California Law Review Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

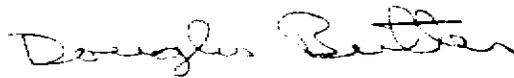
Re: Transfer on Death Designation for Vehicles and  
Certain Other State Registered Property

Dear Sirs:

I think the proposal for transfer on death designation for motor vehicles and other state registered property is an excellent idea. It is important that multiple beneficiaries be allowed.

Very truly yours,

HITCHCOCK, BOWMAN, SCHACHTER  
& BEVERLY



Douglas Butler

DAB/kk

CLRC10.31

FRANK M. SWIRLES  
LAW CORPORATION

NOV 02 1990

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October 31, 1990

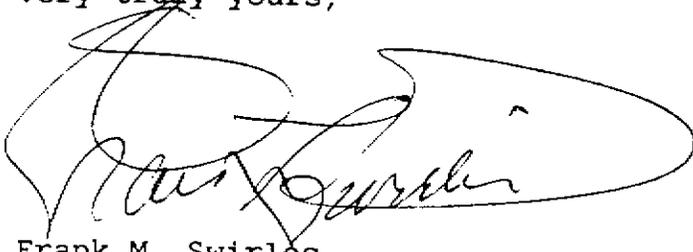
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendations - re Transfer on death  
designation for vehicles and certain other state-  
registered property

Gentlemen:

I have no objections to your recommendations in the above matter.

Very truly yours,



Frank M. Swirles

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Memo 90-141

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Toby F. Montgomery  
Barbara P. Wright

CALIF. LAW REV. COMMISSION

NOV 05 1990

November 2, 1990

RECEIVED

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Dear Commission Members:

I read with great pleasure your proposal to allow transfer-on-death designations for vehicles and similar state registered property.

As an attorney who focuses my practice in estate planning and estate administration, I all too often counsel clients to keep their automobiles in their sole name for liability reasons while knowing that this may result in added legal costs and hassles following death. I support your proposal wholeheartedly.

Sincerely,



TOBY F. MONTGOMERY

TFM/dc

NOV 05 1990

RECEIVED

10/31/90

California Law Revision Commission

I have reviewed your recommendation related to  
Transfer-on-Death Designation for vehicles  
and certain other State Registered Property  
and I agree with your conclusions and  
suggest you propose this recommendation  
to the legislature to be implemented in law  
Thank you for permitting me to make my  
views known

Sincerely  
HA

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HOFFMAN  
SABBAN  
BRUCKER &  
WATENMAKER

LAWYERS

10880 Wilshire  
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Suite 1200  
Los Angeles  
California 90024  
(213) 470-6010  
FAX (213) 470-6735

November 2, 1990

California Law Revision Commission  
4000 Middlefield Rd.  
Suite D-2  
Palo Alto, CA 94303-4739

Re: Study L-3025: Transfer on Death  
Designation for Vehicles

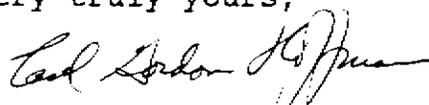
Ladies and Gentlemen:

While I agree in substance with this proposal, I suggest two changes.

First, if you feel that this provision must be included in the Vehicle and Health & Safety Codes, then please provide for a cross reference section to be included in the Probate Code. I suggest that a new part be added to Division 5 (Nonprobate Transfers) to include this cross reference, as well as cross references to all the other Codes governing the transfer of property at death.

Second, have you considered the impact of this provision on the rights of creditors of the decedent/owner? Perhaps a provision akin to Section 18201 would be advisable, allowing creditors to reach property transferred under the proposed provisions where the estate assets are insufficient to meet the claims of the creditors.

Very truly yours,



Paul Gordon Hoffman

LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN

A PROFESSIONAL CORPORATION

12650 RIVERSIDE DRIVE

NORTH HOLLYWOOD, CALIFORNIA 91607-3492

(213) 877-0683 • (818) 984-3950

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Study L-3025  
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HARMON R. BALLIN (1932-1989)

OF COUNSEL

MANYA BERTRAM

JUSTIN GRAF

STEVEN CERVERIS

LEGAL ASSISTANTS

PATRICIA D. FULLERTON

KIRSTEN HELWEG

WILLIAM LEVIN  
JAY J. PLOTKIN  
STUART D. ZIMRING  
NANCY O. MARUTANI  
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GIG KYRIACOU  
JOAN H. OTSU  
RUTH E. GRAF  
STEPHEN L. BUCKLIN

November 8, 1990

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, California 94303-4739

Re: Recommendations L-3022, L-644, L-3046, L-3034, L-3025

Gentlemen:

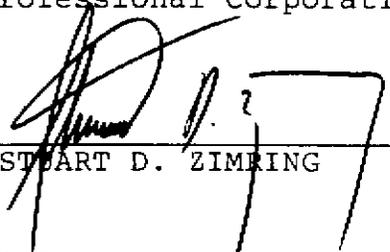
I have reviewed the latest set of tentative recommendations and am in favor of all of them. However, I do wish to express my concern that it appears necessary to provide for a cause of action of "specific performance" as regards Statutory Form Powers of Attorney and Recognition of Trustee Powers. It is regrettable that such useful estate planning tools are not accepted willingly within the business and economic community.

On the other hand, as I read proposed Civil Code Section 2480.5, it only applies to a Statutory Form Power of Attorney. I think it would be more useful (especially since I never use the Statutory Form) to enlarge the enforcement power to apply to any duly executed Durable Power of Attorney.

Lastly, I seem to have misplaced my copy of the Law Revision Commission's Report on the new probate code with commentary. I would appreciate it if you could forward a copy to me. If there is any cost involved, give me a call and I will send you a check.

Sincerely,

LEVIN, BALLIN, PLOTKIN, ZIMRING & GOFFIN  
A Professional Corporation

By:   
STUART D. ZIMRING

SDZ:rs

Memo 90-141

Law Offices of  
**Michael J. Anderson, Inc.**

77 Cadillac Drive, Suite 260  
Sacramento, California 95825  
(916) 921-6921  
FAX (916) 921-9697

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CALIFORNIA LEGISLATURE

Michael J. Anderson

November 12, 1990

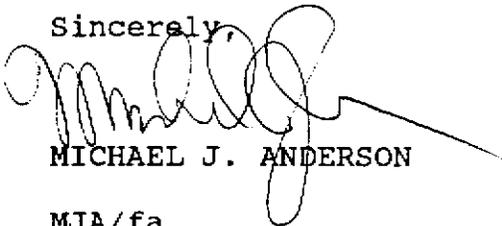
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

To whom it may concern:

In respect to the Transfer-on-Death Designation for Vehicles and certain other State-Registered Property, I am in favor of the concept. However, what about relieving the Department of Motor Vehicles from liability for the transfer under a beneficiary designation which was later proved to be fraudulently obtained?

Also, might not a provision be added that, however, no such designation obtained within 30 days of death would be valid. Such transfer would require the DMV's affidavit procedure.

Sincerely,



MICHAEL J. ANDERSON

MJA/fa

Edward M. Phelps  
Deborah Ballins Schwarz  
Ruth A. Phelps  
Of Counsel  
Barbara E. Dunn

**Phelps, Schwarz & Phelps**  
Attorneys at Law  
215 North Marengo Avenue  
Second Floor  
Pasadena, California 91101

**NOV 19 1990**

**R E C E I V E D**

(818) 795-8844

Facsimile: (818) 795-9586

November 16, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating  
To Transfer on Death Designation  
For Vehicles and Certain Other State-  
Registered Property

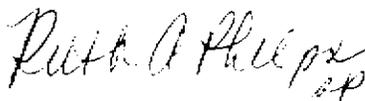
Dear Sir/Madam:

I have read this recommendation and I approve of it. I have one question.

When you designate, can you designate TOD R.A. or E.M. Phelps and then either one of the beneficiaries can transfer the vehicle or can you designate it R.A. and E.M. Phelps and then both must sign to transfer the vehicle? This is not clear from the recommendation.

Keep up the good work.

Very truly yours,



Ruth A. Phelps  
PHELPS, SCHWARZ & PHELPS

RAP:sp

NOV 19 1990

R E C E I V E D

PROFESSIONAL PLAZA  
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ROGER V. MARSHALL\*

JOHN L. BURGHARDT\*

TIMOTHY M. KELLEHER\*

ELIZABETH UFKES OLIVERA

ERNEST S. MIESKE

ROBERT D. HARP

\*Law Corporation

November 14, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

**RE: Tentative Recommendation Relating to Transfer-on-Death Designation for Vehicles and Certain Other State-Registered Property.**

Gentlemen:

I definitely agree that a person should be able to designate the beneficiary of a vehicle upon the death of the owner. Quite often it has been my experience that one or more individuals will be put on title as to a motor vehicle. The Department of Motor Vehicles, almost without exception, indicates title as being in joint tenancy form. Therefore, in essence, a "transfer on death" form. The problem is that the individual who actually provides the consideration to purchase the vehicle does not realize that joint tenancy means that the vehicle will be distributed to the surviving joint tenant rather than by his or her Will.

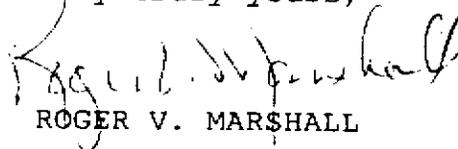
In fact, it is my recommendation that the term "joint tenancy" be eliminated or revised to put the public on notice that by putting assets in joint tenancy form such assets will be distributed to the surviving joint tenant or tenants upon the death of a joint tenant. My experience has been that the vast majority of the individuals and institutions involved in

California Law Revision Commission  
November 14, 1990  
Page 2

arranging for title puts title in joint tenancy form. This would include banks, savings and loans, stock brokerage firms, title companies, real estate brokers, etc.

Indicating on title that the asset will "transfer on death" hopefully will alert the individual that they have entered into the equivalent of a Last Will and Testament as to this one asset.

Very truly yours,



Handwritten signature of Roger V. Marshall in cursive script.

ROGER V. MARSHALL

RVM/mar

ESTATE PLANNING, TRUST AND  
PROBATE LAW SECTION  
THE STATE BAR OF CALIFORNIA

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HARLEY J. SPITLER, *San Francisco*
- Reporter  
LEONARD W. POLLARD II, *San Diego*

November 14, 1990

REPLY TO: 56570-000

Mr. John H. DeMouly  
Executive Director  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94303

Re: Tentative Recommendation Relating to Transfer  
-on-Death Designation for Vehicles and certain  
other State-Registered Property

Dear John:

The Executive Committee has reviewed the above referenced Technical Recommendation and the following comments represent the opinion of the Section.

While the September 1990 tentative recommendation is an improvement over prior drafts over this proposal, there are still significant policy problems.

We reiterate the fact that the transfer-on-death form of title is absolutely unnecessary for vehicles, undocumented vessels and other such property. Our experience has been that transfer of motor vehicles, undocumented vessels and other property is easily accomplished at death. Probate is not required if only motor vehicles or undocumented vessels need to be transferred. In fact, the Department of Motor Vehicles is probably to be commended for the simplicity of their form and the ease of transfer. As the old saying goes, "If it ain't broke, don't fix it".

Mr. John H. DeMouilly  
November 14, 1990  
Page 2

We don't perceive the need for change and we do believe that the proposed changes contain potential problems. Since the Department of Motor Vehicles and the Department of Housing and Community Development are decidedly less than enthusiastic about implementing such a statutory scheme and are contemplating additional costs at a time when the state budget is tight, we believe that this tentative recommendation should be disproved and that no such legislation should be proposed to the legislature.

Footnote 10 on page 4 of the introductory text tries to explain away the legitimate concerns of the Department of Motor Vehicles and the Department of Housing and Community Development that they will incur significant costs in reprogramming their data processing systems to accommodate this new form of title. It is interesting that the source of information as to the experience on costs in Missouri was a Vice Chairman of the Probate and Trust Committee of the Missouri Bar and was not anybody connected with the agencies that administer the system in Missouri. We have to question whether the actual agencies would have given the same responses and stated the costs were insignificant. From the information provided by the Missouri Bar, their Department of Motor Vehicles was already undertaking revisions of their forms and systems anyway. Since this revision was part of an already contemplated overhaul, the incremental cost would necessarily be less great than would be the cost of redesigning the system solely because of this change in the law. In California, since the current system works fine, any computer reprogramming costs will be solely due to this change and will be significantly greater because done in isolation.

Another flaw in the analysis contained in footnote 10 is the assumption that there will be only two names. The assumption is the only change that the data processing system needs are the letters "TOD". We anticipate reality will actually be quite different. Either (1) the system has to allow the designation of "Children Then Living" and devise a form or procedure to prove that all of the children are included at the time a claim for transfer of ownership is made, or (2) the system has to contemplate sufficient additional listing of names so that all children can be listed by name. In some California families there may be eight or ten children, and the computer programs will have to be altered to accommodate a much greater number of names than is currently usually encountered in joint tenancy ownership or other forms of joint ownership.

Mr. John H. DeMouilly  
November 14, 1990  
Page 3

Finally, footnote 10 does not deal with the fact that there are many more automobiles and other vehicles in California than there are in Missouri. It is my understanding that California has more vehicles than are found in any other state, constituting approximately one-tenth the vehicle fleet of the nation. The computer system required to deal with all forms of ownership for that size of a vehicle pool must necessarily be more sophisticated than those of other states. Its redesign must also be more sophisticated and more expensive. We found it questionable that the legitimate concerns of the agencies responsible for administering this law were explained away in a footnote which did not even seriously address the issue.

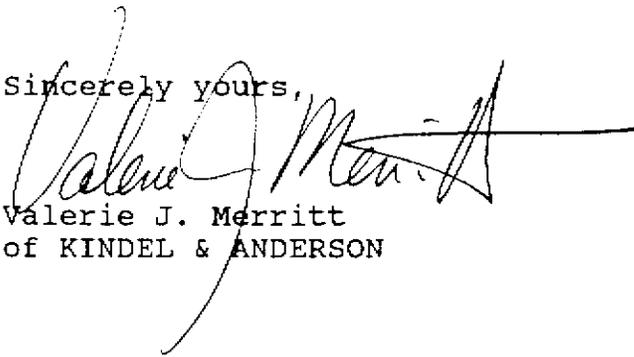
In each covered transfer proceeding, a death certificate is not required by the statute. It is only required "if required by the department". This is true in Health and Safety Code §18102.2(e)(3), Vehicle Code Section 5910.5(f)(3) and Vehicle Code §9916.5(e)(3). In contrast, a certified copy of the death certificate is required for the affidavit procedures in Probate Code §§13101 and 13200. We can see no rational explanation for the requirement in one context and not in the other. We see the potential for fraudulent claims against people who are not yet deceased to be the same in both situations. We strongly recommend that a certified copy of the death certificate be required.

We believe that Vehicle Code §5910.5(b) is a much improved statement in relieving the transferee from potential owner liability until the transfer occurs with the Department of Motor Vehicles. That relief from liability is not contained in the section regarding transfer of undocumented vessels (V.C. §9916.5), or the section regarding the transfer of commercial vehicles, mobile homes and related kinds of property (H & S §18102.2). We are not experts in the laws affecting liability, but we believe that it is possible that there is a similar statute to Vehicle Code §17050 that affects these kinds of property. We can certainly perceive that there might be liability for use of a vessel which could be incurred by a transferee who doesn't even realize that he or she owns the vessel. Similarly, we can conceive of potential liability to the new owner of a mobile home or commercial vehicle. We believe that it would be appropriate for the staff to be certain that either no such liability exists under the existing statutory

Mr. John H. DeMouilly  
November 14, 1990  
Page 4

schemes or that a relief from liability be contained in Health and Safety Code §18102.2 and Vehicle Code §9916.5 similar to that in Vehicle Code §5910.5(b).

Sincerely yours,



Valerie J. Merritt  
of KINDEL & ANDERSON

VJM:gjm  
Enclosure

cc: Bruce Ross  
Clark Byam  
Terry Ross  
Bob Temmerman



JOHN ASHCROFT  
GOVERNOR

DUANE BENTON  
DIRECTOR OF REVENUE

MISSOURI DEPARTMENT OF REVENUE  
DIVISION OF MOTOR VEHICLE AND DRIVERS LICENSING  
POST OFFICE BOX 629  
JEFFERSON CITY, MISSOURI 65105-0629

JOHN A. LUCKS  
DIRECTOR  
DIVISION OF MOTOR VEHICLE  
AND DRIVERS LICENSING  
314/751-4429

October 26, 1990

CA LAW REV. COMM'N

OCT 27 1990

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California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alton, CA 94303-4739

ATTENTION: BOB MURPHY

Dear Mr. Murphy:

This letter is in response to your conversation with a member of our General Counsel, Sandra Mears, concerning Transfer On Death legislation.

Missouri Revised Statute 301.681 (copy attached) concerning Transfer On Death became effective in 1987. This law provides for the transfer of a motor vehicle, trailer, boat, or outboard motor upon death of the owner of the unit if a beneficiary appears on the Missouri certificate of title. Only one beneficiary may be named at the time application for title is made.

Minor changes were necessary for implementation of this law such as a revision to our title application (copy attached) and revision of our official policy. However, the cost to the state of Missouri for implementation of the law concerning "TOD" was minimal.

Currently, we have processed approximately 39,000 title applications with the "TOD" designation.

If you need further assistance in this matter, you may contact my office at (314) 751-3851.

Sincerely,

James B. Callis  
Administrator  
Motor Vehicle Bureau

JBC/blt

Enc

STATE OF CALIFORNIA  
California Law Revision Commission

TENTATIVE RECOMMENDATION

*relating to*

TRANSFER-ON-DEATH DESIGNATION FOR VEHICLES  
AND CERTAIN OTHER STATE-REGISTERED PROPERTY

September 1990

*This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe it should be revised.*

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 15, 1990.

*The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.*

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

# THE CALIFORNIA LAW REVISION COMMISSION

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*Office Technician*

VICTORIA MATIAS  
*Composing Technician*

### Letter of Transmittal

This recommendation proposes that the owner of certain state-registered property (motor vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, truck camper, or floating home) be permitted to designate in the certificate of title the person who will receive the property on death of the owner.

This recommendation is made pursuant to Resolution Chapter 37 of the Statutes of 1980.

RECOMMENDATION

Under existing California law, a person may designate a beneficiary to receive various kinds of property or benefits on the person's death. These include an account in a financial institution,<sup>1</sup> insurance and other death benefits,<sup>2</sup> and benefits payable under

---

1. Prob. Code §§ 5140, 5302.

2. Educ. Code §§ 23702, 23807 (teachers' death benefits); Gov't Code §§ 21332-21335 (public employees' death benefits); Prob. Code § 5000 (insurance, pension or profit-sharing plan). Probate Code Section 5000, enacted by Chapter 79 of the Statutes of 1990, provides:

5000. (a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument.

(b) Included within subdivision (a) are the following:

(1) A written provision that money or other benefits due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(2) A written provision that money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand.

(3) A written provision that any property controlled by or owned by the decedent before death that is the subject of the instrument shall pass to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(c) Nothing in this section limits the rights of creditors under any other law.

various kinds of written instruments.<sup>3</sup> These "nonprobate transfers" permit the owner to designate a beneficiary, while avoiding the expense and delay of a court-supervised probate proceeding.

California law also permits transfer at death, without probate, of certain state-registered property (motor vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, truck camper, or floating home) if the decedent has no other property requiring probate.<sup>4</sup> However, unlike Missouri,<sup>5</sup> California does not permit the

---

3. Prob. Code § 5000 (contract of employment, bond, mortgage, promissory note, deposit agreement, trust agreement, conveyance, or instrument effective as a contract, gift, conveyance, or trust). See *supra* note 2 for the text of Section 5000. See also 31 C.F.R. § 315.79(c) (U. S. savings bond in beneficiary form).

4. Health & Safety Code § 18102 (manufactured home, mobilehome, commercial coach, truck camper, floating home); Veh. Code §§ 5910 (vehicle), 9916 (undocumented vessel). Although the procedure for transferring these kinds of property at death is simple and expeditious, it is of limited application because it may only be used if the owner has no other property requiring probate. Probate will usually be unnecessary if the estate value is \$60,000 or less. See Prob. Code §§ 13050, 13100. For these estates, the decedent's successors may use an affidavit procedure to collect personal property and a summary court proceeding to get title to real property. See Prob. Code §§ 13050, 13100-13157. The following property is excluded in determining whether the estate value is \$60,000 or less: Property held by the decedent as a joint tenant, property in which the decedent had a life or other interest terminable upon the decedent's death, property which passed to the decedent's surviving spouse by will or intestate succession, a multiple-party account in a financial institution to which the decedent was a party at death, the state-registered property described above, amounts due to the decedent for services in the armed forces of the United States, and compensation not exceeding \$5,000 owing to the decedent for employment. Prob. Code § 13050.

5. Missouri enacted legislation in 1987 to permit the owner of a motor vehicle to designate in the title document a person to receive the property on the owner's death. Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). A sample of the new TOD title document used in Missouri is set out in the appendix to this recommendation. There have been about 30,000 TOD registrations in Missouri since the Missouri statute was enacted in 1987. Letter from Sandra A. Mears, Senior Counsel for State of Missouri Department of Revenue, to Leo E. Eickhoff, Jr. (July 20, 1990) (copy on file in office of California Law Revision Commission). Missouri has experienced no serious legal or practical problems under the new law. Telephone interview with Leo E. Eickhoff, Jr., Vice Chairman of the Probate and Trust Committee of the Missouri Bar.

registered owner of a motor vehicle or other state-registered property to register the property in transfer-on-death (TOD) form -- that is, a form that designates on the certificate of title the person who is to receive the property on death of the owner.

The primary advantage of registering property in TOD form is the avoidance of the time and expense of probate. A typical probate proceeding may last a year or more. Expenses can range from two to five percent of the value of the property passing through probate.<sup>6</sup> When property is placed in TOD form, ownership passes automatically to the TOD beneficiary upon the transferor's death. There is no need for a probate proceeding or for appointment of a personal representative, and there is usually no need for an attorney.

Under existing law, some owners now avoid probate by putting title to their motor vehicle or other state-registered property in co-ownership with the intended beneficiary. However, TOD registration has the advantage of permitting the owner to revoke or change the beneficiary during lifetime. The owner thus maintains total control over the property. Creating a co-ownership, on the other hand, requires the owner to give up some control over the property during his or her lifetime.<sup>7</sup> In the case of a motor vehicle, co-ownership also

---

6. For an estate of one million dollars or less, the statutory fee of the probate attorney for ordinary services ranges from four percent on the first \$15,000 of estate value to two percent on the last \$900,000. The personal representative is entitled by statute to a fee in the same amount, also based on the value of the estate. The court may allow an additional fee to the attorney or personal representative for "extraordinary services." See Prob. Code §§ 10800-10805 (personal representative), 10810 (attorney). An additional charge (not less than \$75) is made by the probate referee for services in appraising the estate. See Prob. Code §§ 8961, 8963. These fees and charges are in addition to the fees charged for filing the probate proceeding with the court. See Gov't Code § 26827.

7. Under existing California law, the owner of a motor vehicle or undocumented vessel may create a co-ownership with the intended beneficiary either by using the conjunctive "and" form or by using the alternative "or" form. Veh. Code §§ 4150.5, 5600.5 (motor vehicle), 9852.5 (undocumented vessel). If the "and" form is used, either co-owner can dispose of the property during lifetime only with the consent and signature of the other co-owner. *Id.* If the "or" form is used, either co-owner may dispose of the property without the consent or signature of the other co-owner. *Id.* If the intended death beneficiary takes advantage of this provision and disposes of the property while the transferor is still living, the transferor's purpose in creating the co-ownership will be frustrated.

has the disadvantage of exposing the intended death beneficiary to potential owner's liability for damages arising from negligent operation of the vehicle by someone else.<sup>8</sup>

TOD registration should be authorized in California to permit the owner to designate a person to receive the property at death without giving up control of the property during lifetime and without exposing the intended death beneficiary to potential owner's liability during the transferor's lifetime. This would not be a novel concept in California, because California already recognizes TOD designations in other contexts.<sup>9</sup>

The Commission recommends enactment of legislation to authorize the owner of a motor vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, truck camper, or floating home to make a TOD designation in the title document.<sup>10</sup>

---

In the case of a manufactured home, mobilehome, commercial coach, truck camper, or floating home, the transferor must use the "and" form to pass title to the intended beneficiary at death. See Health & Safety Code § 18080. By so doing, the transferor gives up the right unilaterally to transfer the property, because the signature of the other co-owner is required. *Id.*

8. See Veh. Code § 17150.

9. See *supra* notes 1-3 and accompanying text.

10. The agencies responsible for administering this system will be the Department of Motor Vehicles and the Department of Housing and Community Development. Both agencies have estimated significant costs of reprogramming their data processing systems to accommodate this new form of title. However, when Missouri authorized a TOD title form for motor vehicles (*supra* note 5), no cost was involved to revise the title certificate to include TOD registration, because the Missouri Bureau of Motor Vehicle Licensing was already working on a new form. Telephone interview with Leo E. Eickhoff, Jr., Vice Chairman of the Probate and Trust Committee of the Missouri Bar. Also, there were no significant costs of computer reprogramming in Missouri. The TOD form generally takes the place of some form of co-ownership, so two names are already needed. The only addition needed in the data processing system are the letters "TOD." *Id.* The Missouri experience suggests that, if TOD registration is authorized in California, reprogramming costs will be insignificant.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following additions:

Health & Safety Code § 18080.2 (added). Ownership of manufactured home, mobilehome, commercial coach, truck camper, or floating home in beneficiary form

18080.2. (a) Ownership registration and title to a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the manufactured home, mobilehome, commercial coach, truck camper, or floating home to one or more designated beneficiaries on death of the sole owner or last surviving coowner. A certificate of title issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the manufactured home, mobilehome, commercial coach, truck camper, or floating home for which a certificate of ownership in beneficiary form has been issued.

Comment. Section 18080.2 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). The language of Section 18080.2 is conformed to the usage in this article. See, e.g., Health & Safety Code § 18080.

Unlike Missouri law, Section 18080.2 permits designation of multiple beneficiaries, consistent with the POD designation permitted in favor of multiple beneficiaries under the California Multiple-Party Accounts Law. See Prob. Code § 5302.

See also Health & Safety Code § 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Health & Safety Code § 18102.2 (added). Transfer of manufactured home, mobilehome, commercial coach, truck camper, or floating home owned in beneficiary form

18102.2. (a) On death of a sole owner or the last surviving coowner of a manufactured home, mobilehome, commercial coach, truck camper, or floating home owned in beneficiary form, the manufactured home, mobilehome, commercial coach, truck camper, or floating home belongs to the surviving beneficiary or beneficiaries, if any. If

there is no surviving beneficiary, the manufactured home, mobilehome, commercial coach, truck camper, or floating home belongs to the estate of the deceased owner or of the last coowner to die.

(b) A certificate of title in beneficiary form may be revoked or the beneficiary changed at any time before the death of a sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the manufactured home, mobilehome, commercial coach, truck camper, or floating home, with proper assignment and delivery of the certificate of title to another person.

(2) By application for a new certificate of title without designation of a beneficiary or with the designation of a different beneficiary or beneficiaries.

(c) Except as provided in subdivision (b), designation of a beneficiary in a certificate of title issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

(d) The beneficiary's interest in the manufactured home, mobilehome, commercial coach, truck camper, or floating home at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

(e) The surviving beneficiary or beneficiaries may secure a transfer of ownership for the manufactured home, mobilehome, commercial coach, truck camper, or floating home upon presenting to the department all of the following:

(1) The appropriate certificate of title and registration card, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the manufactured home, mobilehome, commercial coach, truck camper, or floating home as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(f) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to

the manufactured home, mobilehome, commercial coach, truck camper, or floating home shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(g) If there is no surviving beneficiary or coowner, the person or persons described in Section 18102 may secure transfer of the manufactured home, mobilehome, commercial coach, truck camper, or floating home as provided in that section.

(h) The department may prescribe forms for use pursuant to this section.

Comment. Section 18102.2 is new. Subdivisions (a) through (d) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (e) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (f) is drawn from Probate Code Section 5304. Subdivision (h) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code § 18080.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

Vehicle Code § 4150.7 (added). Ownership of vehicle in beneficiary form

4150.7. (a) Ownership of title to a vehicle subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the vehicle to one or more designated beneficiaries on death of the sole owner or last surviving coowner. A certificate of ownership issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the vehicle for which a certificate of ownership in beneficiary form has been issued.

Comment. Section 4150.7 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 5910.5, 9852.7, 9916.5.

Unlike Missouri law, Section 4150.7 permits designation of multiple beneficiaries, consistent with the POD designation permitted in favor of multiple beneficiaries under the California Multiple-Party Accounts Law. See Prob. Code § 5302.

Vehicle Code § 5910.5 (added). Transfer of vehicle owned in beneficiary form

5910.5. (a) On death of a sole owner or the last surviving coowner of a vehicle owned in beneficiary form, the vehicle belongs to the surviving beneficiary or beneficiaries, if any. If there is no surviving beneficiary, the vehicle belongs to the estate of the deceased owner or of the last coowner to die.

(b) A surviving beneficiary who becomes owner of a vehicle under subdivision (a) is not liable under Section 17150 until record ownership of the vehicle is transferred to the beneficiary.

(c) A certificate of ownership in beneficiary form may be revoked or the beneficiary changed at any time before the death of a sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the vehicle with proper assignment and delivery of the certificate of ownership to another person.

(2) By application for a new certificate of ownership without designation of a beneficiary or with the designation of a different beneficiary or beneficiaries.

(d) Except as provided in subdivision (c), designation of a beneficiary in a certificate of ownership issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

(e) The beneficiary's interest in the vehicle at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

(f) The surviving beneficiary or beneficiaries may secure a transfer of ownership for the vehicle upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and registration card, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the vehicle as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(g) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to the vehicle shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(h) If there is no surviving beneficiary or coowner, the person or persons described in Section 5910 may secure transfer of the vehicle as provided in that section.

(i) The department may prescribe forms for use pursuant to this section.

Comment. Section 5910.5 is new. Subdivisions (a) and (c) through (e) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (b) codifies case law. See Bunch v. Kin, 2 Cal. App. 2d 81, 85, 37 P.2d 744 (1934). Subdivision (f) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (g) is drawn from Probate Code Section 5304. Subdivision (i) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 9852.7, 9916.5.

Unlike Missouri law, Section 5910.5 permits designation of multiple beneficiaries, consistent with the POD designation permitted in favor of multiple beneficiaries under the California Multiple-Party Accounts Law. See Prob. Code § 5302.

Vehicle Code § 9852.7 (added). Ownership of vessel in beneficiary form

9852.7. (a) Ownership of an undocumented vessel subject to registration may be held in beneficiary form that includes a direction to transfer ownership of the vessel to one or more designated beneficiaries on death of the sole owner or last surviving coowner. A certificate of ownership issued in beneficiary form shall include, after the name of the owner or names of the coowners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

(b) During the lifetime of a sole owner or of any coowner, the signature or consent of a beneficiary is not required for any transaction relating to the vessel for which a certificate of ownership in beneficiary form has been issued.

Comment. Section 9852.7 is new and is drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). See also Health &

Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9916.5.

Unlike Missouri law, Section 9852.7 permits designation of multiple beneficiaries, consistent with the POD designation permitted in favor of multiple beneficiaries under the California Multiple-Party Accounts Law. See Prob. Code § 5302.

Vehicle Code § 9916.5 (added). Transfer of vessel owned in beneficiary form

9916.5. (a) On death of a sole owner or the last surviving coowner of a vessel numbered under this division and owned in beneficiary form, the vessel belongs to the surviving beneficiary or beneficiaries, if any. If there is no surviving beneficiary, the vessel belongs to the estate of the deceased owner or of the last coowner to die.

(b) A certificate of ownership in beneficiary form may be revoked or the beneficiary changed at any time before the death of a sole owner or of the last surviving coowner by either of the following methods:

(1) By sale of the vessel with proper assignment and delivery of the certificate of ownership to another person.

(2) By application for a new certificate of ownership without designation of a beneficiary or with the designation of a different beneficiary or beneficiaries.

(c) Except as provided in subdivision (b), designation of a beneficiary in a certificate of ownership issued in beneficiary form may not be changed or revoked by will, by any other instrument, by a change of circumstances, or otherwise.

(d) The beneficiary's interest in the vessel at death of the owner or last surviving coowner is subject to any contract of sale, assignment, or security interest to which the owner or coowners were subject during their lifetimes.

(e) The surviving beneficiary or beneficiaries may secure a transfer of ownership for the vessel upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available.

(2) A certificate under penalty of perjury stating the date and place of the decedent's death and that the declarant is entitled to the vessel as the designated beneficiary.

(3) If required by the department, a certificate of the death of the decedent.

(f) A transfer at death pursuant to this section is effective by reason of this section, and shall not be deemed to be a testamentary disposition of property. The right of the designated beneficiary to the vessel shall not be denied, abridged, or affected on the grounds that the right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

(g) If there is no surviving beneficiary or coowner, the person or persons described in Section 9916 may secure transfer of the vessel as provided in that section.

(h) The department may prescribe forms for use pursuant to this section.

Comment. Section 9916.5 is new. Subdivisions (a) through (d) are drawn from Missouri law. See Mo. Ann. Stat. § 301.681 (Vernon Supp. 1990). Subdivision (e) is drawn from Health and Safety Code Section 18102(b) and Vehicle Code Sections 5910(b) and 9916(b). Subdivision (f) is drawn from Probate Code Section 5304. Subdivision (h) is drawn from Vehicle Code Section 5910(c). See also Health & Safety Code §§ 18080.2, 18102.2; Veh. Code §§ 4150.7, 5910.5, 9852.7, 9916.5.

APPENDIX

STATE OF MISSOURI

CERTIFICATE OF TITLE ORIGINAL

00616GH103

TITLE NUMBER AJ263258

VE MAKE VEHICLE IDENTIFICATION NUMBER BODY STYLE FUEL CODE
82 BUIC 1G4A569G2CK432353 FODDR 6

CYL H.P. MILEAGE AT THE TIME OF TRANSFER TAX PURCHASE DATE DATE ISSUED
4 19 15709 EX 01 10/06/87 10/28/87

OWNER ZIERCHER MARIE & TOD EICKHOFF ROSALIE
12403 BALLAS MEADOWS
ST LOUIS MO 63131 6888

CODE LEGEND
R - RECONSTRUCTED VEHICLE W - HEAVY DAMAGE VEHICLE A - KIT VEHICLE
S - SPECIALLY CONSTRUCTED VEHICLE M - MOTOR CHANGE VEHICLE

MAIL TO ZIERCHER MARIE & TOD EICKHOFF ROSALIE
12403 BALLAS MEADOWS
ST LOUIS MO 63131

RELEASE OF LIEN

The holder of lien on the vehicle described in this Certificate of Title shall hereby state that the lien described in said Certificate of Title is released and discharged.

VEHICLE SUBJECT TO LIEN(S)

FIRST LIEN

NAME OF FIRM
SIGNATURE OF AUTHORIZED AGENT
DATE RELEASED

SECOND LIEN

NAME OF FIRM
SIGNATURE OF AUTHORIZED AGENT
DATE RELEASED

THIRD LIEN

NAME OF FIRM
SIGNATURE OF AUTHORIZED AGENT
DATE RELEASED

DOR-387 (REV. 7-86)

ANY ALTERATION OR ERASURE VOIDS THIS TITLE



INSTRUCTIONS TO SELLER Complete the mileage block as of the date of sale or transfer. Sign as seller before a Notary Public AFTER the PURCHASER(S), LIENHOLDER, SALE PRICE AND MILEAGE spaces are completed. All owners must sign as SELLERS. INSTRUCTIONS TO PURCHASER You must apply for a new Certificate of Title within 30 days from the date of purchase or pay a delinquent penalty. All liens on the front of this Certificate of Title must be released before you apply for a new Certificate of Title. WARNING: ALTERATIONS, ERASURES, OR MISTREATMENT OF LAMINATION WILL VOID THIS CERTIFICATE OF TITLE. ASSIGNMENT OF TITLE: (We hereby assign and warrant Certificate of Title of the vehicle described on the front of this Certificate of Title subject to the following lien(s) or encumbrance(s), if any, and none other. (We further certify the accuracy of the sale price and message as specified below.

PURCHASER(S) NAME MARIE ZIERCHER TO D SALE PRICE \$ NONE  
ADDRESS ROSALIE FICKHOFF, 12403 BALLAS MEADOWS, STACHIS  
LIENHOLDER(S) NAME MD 63131 DATE OF LIEN NONE

ADDRESS \_\_\_\_\_  
I certify to the best of my knowledge that the odometer reading is and reflects the actual mileage of the vehicle unless one of the following statements is checked:  
 1. The mileage is in excess of 99,999 miles.  
 2. The odometer reading is not actual mileage. (Attach explanatory affidavit)

SIGNATURE OF SELLER(S) Maria Ziercher ODOMETER READING 23,712  
Subscribed and sworn to before me this 15<sup>th</sup> day of Oct, 1997

NOTARY PUBLIC \_\_\_\_\_ My Commission Expires \_\_\_\_\_

REASSIGNMENT BY REGISTERED DEALER (We hereby assign and warrant Certificate of Title of the vehicle described on the front of this Certificate of Title subject to the following lien(s) or encumbrance(s), if any, and none other. (We further certify the accuracy of the sale price and message as specified below.

PURCHASER(S) NAME \_\_\_\_\_ SALE PRICE \$ \_\_\_\_\_

ADDRESS \_\_\_\_\_

LIENHOLDER(S) NAME \_\_\_\_\_ DATE OF LIEN \_\_\_\_\_

ADDRESS \_\_\_\_\_

I certify to the best of my knowledge that the odometer reading is and reflects the actual mileage of the vehicle unless one of the following statements is checked:  
 1. The mileage is in excess of 99,999 miles.  
 2. The odometer reading is not actual mileage. (Attach explanatory affidavit)

SIGNATURE OF DEALER OR AGENT \_\_\_\_\_ DEALER'S NUMBER \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_ My Commission Expires \_\_\_\_\_

REASSIGNMENT BY REGISTERED DEALER (We hereby assign and warrant Certificate of Title of the vehicle described on the front of this Certificate of Title subject to the following lien(s) or encumbrance(s), if any, and none other. (We further certify the accuracy of the sale price and message as specified below.

PURCHASER(S) NAME \_\_\_\_\_ SALE PRICE \$ \_\_\_\_\_

ADDRESS \_\_\_\_\_

LIENHOLDER(S) NAME \_\_\_\_\_ DATE OF LIEN \_\_\_\_\_

ADDRESS \_\_\_\_\_

I certify to the best of my knowledge that the odometer reading is and reflects the actual mileage of the vehicle unless one of the following statements is checked:  
 1. The mileage is in excess of 99,999 miles.  
 2. The odometer reading is not actual mileage. (Attach explanatory affidavit)

SIGNATURE OF DEALER OR AGENT \_\_\_\_\_ DEALER'S NUMBER \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_ My Commission Expires \_\_\_\_\_

REASSIGNMENT BY REGISTERED DEALER (We hereby assign and warrant Certificate of Title of the vehicle described on the front of this Certificate of Title subject to the following lien(s) or encumbrance(s), if any, and none other. (We further certify the accuracy of the sale price and message as specified below.

PURCHASER(S) NAME \_\_\_\_\_ SALE PRICE \$ \_\_\_\_\_

ADDRESS \_\_\_\_\_

LIENHOLDER(S) NAME \_\_\_\_\_ DATE OF LIEN \_\_\_\_\_

ADDRESS \_\_\_\_\_

I certify to the best of my knowledge that the odometer reading is and reflects the actual mileage of the vehicle unless one of the following statements is checked:  
 1. The mileage is in excess of 99,999 miles.  
 2. The odometer reading is not actual mileage. (Attach explanatory affidavit)

SIGNATURE OF DEALER OR AGENT \_\_\_\_\_ DEALER'S NUMBER \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_ My Commission Expires \_\_\_\_\_